IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

FAO.No. 3 OF 2007()

EP. 90/2001 IN LAR.87/1986 OF SUB COURT,THODUPUZHA

APPELLANT/JUDGMENT DEBTOR:

STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, IDUKKI.

BY GOVERNMENT PLEADER SRI. V.T.K. MOHANAN.

RESPONDENTS/DECREE HOLDER/ CLAIMANT:

VALLIYAMMA PAPPIYAMMA,
PARAYANAL HOUSE, KUDAYATHOOR.

BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.R.V.SATHYAPRIYAN NAIR

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. 48/2007 IN F.A.O. 3/2007

// DISMISSED //

19.9.2007. SD/-
P.R. RAMAN, JUDGE.

SD/-
V.K. MOHANAN, JUDGE.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

P.R. RAMAN & V. K. MOHANAN, JJ.

F.A.O. NO. 3 OF 2007

DATED THIS, THE 19TH DAY OF SEPTEMBER, 2007.

J U D G M E N T

Raman, J.

The State is the appellant who is the judgment debtor in E.P. 90/2001 in L.A.R. 87/1986 on the file of the Sub Court, Thodupuzha.

2. There was a dispute regarding the actual amount due and payable as per the decree. The court below, after considering the contentions on either side, quantified the amount as per its order passed as early as in 2004. Thereafter, the property was put for sale. The decree holder, after obtaining permission, purchased the property. The executing court quantified the amount towards the decree as Rs. 11,500/-. The appellant State would contend that the property worth Rs. 5 lakhs is sold for a meager amount to be realised, which is only Rs. 11,500/-. Though contentions are raised disputing the correctness of the amount as quantified by the court below, as rightly pointed out by the learned counsel for the respondent, this is a case where quantification was done long back as early as in 2004 against which no challenge was made by the State. The present petition filed is only against the sale conducted. As such the only contention that could be

advanced is regarding as to whether the sale conducted tainted with material irregularity or fraud. Fraud as such could not be proved in this case. As regards the material irregularity, the only question that could be considered is as to whether the entire property as such is liable to be sold for realisation of this paltry amount of Rs. 11,500/-. Learned counsel for the respondent did not seriously raise any objection to set aside the sale in case the decree amount with reasonable interest is paid by the judgment debtor State.

3. Having heard both sides, the sale of the property is set aside on condition that the appellant shall deposit an amount of Rs. 13,000/- towards the decree amount within a period of one month from today and if such deposit is made, the same be paid to the decree holder and decree will be recorded as satisfied. The respondent herein is also allowed to withdraw the auction amount already deposited by him.

4. In case the appellant fails to deposit the amount as directed above, it will be open to the decree holder to proceed with the execution proceedings to take delivery of the property.

The appeal is disposed of as above.

P.R. RAMAN,
(JUDGE)

V. K. MOHANAN,
(JUDGE)

knc/-